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ORDINANCE NO. 99-43

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE 92-20, KNOWN AS THE UNIFIED LAND DEVELOPMENT CODE OF PALM BEACH COUNTY, FLORIDA AS FOLLOWS: ARTICLE 4 (DECISIONMAKING, ADMINISTRATIVE AND ENFORCEMENT BODIES); ARTICLE 14 (ENFORCEMENT PROCEEDINGS AND PENALTIES); PROVIDING FOR INTERPRETATION OF CAPTIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

17 **WHEREAS**, Chapter 125, Florida Statutes, establishes the right and power of counties to
18 provide for the health, welfare, and safety of existing and future residents by enacting and enforcing
19 land development and administrative regulations necessary for protection of the public; and

20 **WHEREAS**, Palm Beach County Ordinance 92-20 provided for the adoption of the Unified
21 Land Development Code on June 16, 1992, pursuant to Section 163.3202, Florida Statutes to further
22 growth management requirements; and

23 **WHEREAS**, Chapter 162, Florida Statutes, permits local governing bodies to adopt an
24 alternative code enforcement system which gives code enforcement special masters the authority to
25 hold hearings and assess fines against violators of county codes and ordinances; and

26 **WHEREAS**, the Legislature has amended Chapter 162, Florida Statutes, to require owners
27 of property subject to an enforcement proceeding to disclose certain information prior to transfer of
28 the property; and

29 **WHEREAS**, the Legislature has amended Chapter 162, Florida Statutes, to permit counties
30 having a population equal to or greater than 50,000 to adopt an ordinance giving code enforcement
31 boards or special masters, or both, the authority to impose increased fines; and

32 **WHEREAS**, the proposed amendments to the Unified Land Development Code have been
33 reviewed by the Citizens Task Force at public workshops and recommendations of the Citizens Task
34 Force were forwarded to the Board of County Commissioners; and

35 **WHEREAS**, the Citizens Task Force, sitting as the Land Development Regulation
36 Commission, finds that this amendment to the Unified Land Development Code is consistent with
37 the Comprehensive Plan; and

1 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
2 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

3

4 **PART 1** The Unified Land Development Code of Palm Beach County is amended as follows:

5 **SUBPART 1** Section 4.14, CODE ENFORCEMENT BOARD, is amended to add and delete
6 language as follows:

7 SEC. 4.14 ~~CODE ENFORCEMENT BOARD~~. CODE ENFORCEMENT SPECIAL MASTERS.

8 A. ~~Establishment. There is hereby established a Palm Beach County Code Enforcement~~
9 ~~Board in accordance with the provisions of Sec. 162.01 et. seq., Fla. Stat.~~

10 B. ~~Powers and duties. The Code Enforcement Board shall have the following powers~~
11 ~~and duties:~~

12 1. ~~To hold hearings and to make findings of fact and conclusions of law as are~~
13 ~~necessary to enforce the provisions of this Code and the building, electrical,~~
14 ~~fire, gas, landscape, plumbing, and other codes of Palm Beach County if there~~
15 ~~has been a failure to correct a violation within the time specified by the Code~~
16 ~~Inspector, if the violation has been repeated, or is of such a nature that it~~
17 ~~cannot be corrected.~~

18 2. ~~To adopt rules of procedure for the conduct of hearings.~~

19 3. ~~To issue subpoenas compelling the presence of persons at Code Enforcement~~
20 ~~Board hearings. Subpoenas may be served by the Palm Beach County~~
21 ~~Sheriff's Department, or other authorized persons consistent with Rule~~
22 ~~1.740(1), Fla.R.Civ.Pro.~~

23 4. ~~To issue subpoenas compelling the provision of evidence at Code~~
24 ~~Enforcement Board hearings.~~

25 5. ~~To take testimony under oath.~~

26 6. ~~To issue orders having the force of law commanding whatever steps are~~
27 ~~necessary to achieve compliance with the violation of this Code and the~~
28 ~~County's building, electrical, fire, gas, landscape, plumbing and other codes~~
29 ~~of Palm Beach County.~~

1 7. To levy fines not to exceed two hundred fifty dollars (\$250) for a first
2 violation, or five hundred dollars (\$500) for a repeat violation, for each day
3 a violation continues past the first day.

4 8. To lien property:

5 9. To assess costs pursuant to Sec. 14.2.B. of this Code.

6 10. To assess costs pursuant to Sec. 14.2.D. of this Code.

7 11. To serve ex officio as Code Enforcement Special Masters with the power to
8 preside individually over Code Enforcement hearings; to exercise all powers
9 and carry out all duties of the Code Enforcement Board as set forth in this
10 Code.

11 E. Board membership.

12 1. Qualifications. Members of the Code Enforcement Board shall be qualified
13 electors of Palm Beach County. No member of the Board of County
14 Commissioners, or a County employee including a Board of County
15 Commission aide shall serve on the Code Enforcement Board. The Code
16 Enforcement Board shall be composed of seven (7) members and two (2)
17 alternates. The membership of the Code Enforcement Board shall, whenever
18 possible, include an architect, a business person, an engineer, a general
19 contractor, a landscape architect, a subcontractor, a planner, a realtor, and an
20 attorney.

21 2. Appointment. Members of the Code Enforcement Board shall be appointed
22 on the basis of experience or interest in the subject matter through the sole
23 discretion of the Board of County Commissioners.

24 3. Terms of office.

25 a. All Code Enforcement Board members shall serve a term of three (3)
26 years. All members serving on the Code Enforcement Board on the
27 effective date of this Code shall complete their terms according to
28 their prior appointments.

29 b. There shall be no limit on the number of terms a person may serve on
30 the Code Enforcement Board.

- c. The maximum number of boards and commissions that a person appointed by the Board of County Commissioners may serve on at one (1) time shall be three (3), unless otherwise limited by the dual office-holding prohibition set forth in Sec. 5(a), Art. II of the Florida Constitution. Members affected by Sec. 4.14.C. of this Code shall be governed by Palm Beach County Ordinance No. 91-38, as amended.
- d. Members of the Code Enforcement Board shall not be prohibited from qualifying as a candidate for elected office.

4. ~~Removal from office.~~

- a. A code enforcement board member shall serve at the pleasure of the board of county commissioners, and may be removed by the board of county commissioners without cause at any time.
- b. In the event that any Code Enforcement Board member is no longer a qualified elector, or the member is convicted of a felony or an offense involving moral turpitude while in office, the Board of County Commissioners shall terminate the appointment of such person as a member of the Code Enforcement Board.
- c. Any member who fails to attend two (2) of three (3) successive meetings without an excused absence and without prior approval of the Chairman shall automatically forfeit the appointment. Participation for less than three-fourths (3/4) of a meeting shall constitute lack of attendance. A member of the Code Enforcement Board who has been automatically removed for lack of attendance may be reappointed by the Board of County Commission member who originally appointed that person.
- d. Excused absence constitutes absence due to illness, absence from Palm Beach County, or personal hardship, if approved by a majority vote of the Code Enforcement Board. Excused absence shall be entered into the minutes at the next regularly scheduled meeting of the Code Enforcement Board.

e. Members removed from office shall be terminated immediately and shall not continue to serve until a new appointment is made by the Board of County Commissioners.

5. Vacancy.

a. When a member resigns or is removed, the Board of County Commissioners shall fill the vacancy within thirty (30) days.

b. Any appointment to fill any vacancy shall be for the remainder of the unexpired term of office.

6. Conflict of Interest.

a. General. No Code Enforcement Board member shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activities, or incur any obligation of any nature which is in substantial conflict with the proper discharge of duties as a member of the Code Enforcement Board.

b. Implementation. To implement this policy and strengthen the faith and confidence of the citizens of Palm Beach County, members of the Code Enforcement Board are directed:

(1) ~~To be governed by the applicable provisions of the Palm Beach County Code of Ethics and the State of Florida Code of Ethics, chapter 112, Part III, Fla. Stat., as may be amended from time to time.~~

(2) Not to accept any gift, favor or service that might reasonably tend to improperly influence the discharge of official duties;

(3) To make known by written or oral disclosure, on the record at a Code Enforcement Board meeting, any interest which the member has in any pending matter before the Code Enforcement Board, before any deliberation on that matter.

(4) To abstain from using membership on the Code Enforcement Board to secure special privileges or exemptions.

(5) To refrain from engaging in any business or professional

1 activity which might reasonably be expected to require
2 disclosure of information acquired by membership on the
3 Code Enforcement Board not available to members of the
4 general public, and to refrain from using such information for
5 personal gain or benefit.

6 (6) To refrain from accepting employment which might impair
7 independent judgment in the performance of responsibilities
8 as a member of the Code Enforcement Board.

9 (7) To refrain from accepting or receiving any additional
10 compensation from any source other than Palm Beach County
11 for duties performed as a member of the Code Enforcement
12 Board.

13 (8) To refrain from transacting any business in an official
14 capacity as a member of the Code Enforcement Board with
15 any business entity of which the member is an officer,
16 director, agent or member, or in which the member owns a
17 controlling interest.

18 (9) To refrain from participation in any matter in which the
19 member has a personal investment which will create a
20 substantial conflict between private and public interests.

21 c. Board action. Willful violation of this subsection which affects a
22 vote of a Code Enforcement Board member shall render that action
23 voidable by the Board of County Commissioners.

24 D. Officers; quorum; rules of procedure.

25 1. Chairman and vice-chairman. At an annual organizational meeting, the
26 members of the Code Enforcement Board shall elect one (1) of their members
27 as Chairman and one (1) as Vice-Chairman. In the absence of the Chairman,
28 the Vice-Chairman shall act as Chairman and shall have all powers of the
29 Chairman. The Chairman shall serve a term of one (1) year. No member shall
30 serve as Chairman for more than two (2) consecutive terms. The Chairman

1 shall administer oaths, shall be in charge of all proceedings before the Code
2 Enforcement Board, and shall take such action as shall be necessary to
3 preserve the order and the integrity of all proceedings before the Code
4 Enforcement Board.

5 2. Staff. The Code Enforcement Division shall provide all administrative and
6 clerical staff for all Special Masters and the Code Enforcement Board as may
7 be reasonably required for the proper performance of their legal duties. A
8 Secretary provided by the Code Enforcement Division shall keep minutes of
9 all proceedings before each Code Enforcement Special Master and before the
10 Code Enforcement Board. The Secretary shall maintain all records of these
11 proceedings which shall be stored with the Code Enforcement Division and
12 shall be available for inspection by the public, upon reasonable request,
13 during normal business hours.

14 3. County attorney. The County Attorney's Office shall provide counsel and
15 interpretation on legal issues.

16 4. Quorum and voting. No meeting of the Code Enforcement Board shall be
17 called to order, nor may any business be transacted by the Code Enforcement
18 Board, without a quorum consisting of a majority of the members of the Code
19 Enforcement Board being present. A majority vote of the quorum present
20 shall be necessary for the Code Enforcement Board to take action. In the
21 event of a tie vote, the proposed motion shall be considered to have failed. No
22 member shall abstain from voting unless there is a conflict of interest
23 pursuant to this Article, or Sec. 112.01 et. seq., Fla. Stat.

24 5. Rules of procedure. The Code Enforcement Board may, by a majority vote
25 of the entire membership, adopt additional rules of procedure for the
26 transaction of business and shall keep a record of meetings, resolutions,
27 findings and determinations. The Code Enforcement Board may provide for
28 transcription of such hearings and proceedings, or portions of hearings and
29 proceedings, as may be deemed necessary.

1 E. Meetings.

2 1. General. General meetings of the Code Enforcement Board shall be held no
3 less frequently than once every two (2) months. Special meetings may be
4 called by the Chairman of the Code Enforcement Board, or in writing by a
5 majority of the members of the Board. Twenty four (24) hour written notice
6 shall be given to each Code Enforcement Board member for a special
7 meeting. Hearings before a Code Enforcement Special Master shall be
8 convened as needed. In the case of an alleged violation as set forth in Sec.
9 14.2.A.3 of this Code, a hearing may be called as soon as practical.
10 2. Location. The location of meetings shall be in Palm Beach County, Florida.
11 3. Operating procedures. All cases brought before the Code Enforcement Board
12 and Code Enforcement Special Master shall be presented by the Code
13 Enforcement Division of PZB.
14 4. Continuance. If a matter is postponed due to lack of a quorum, the Chairman
15 shall continue the meeting to the next regularly scheduled Code Enforcement
16 Board meeting. The Secretary shall notify all members of the date of the
17 continued meeting and also shall notify all parties.
18 5. Meetings open to public. All meetings and public hearings of the Code
19 Enforcement Board shall be open to the public.
20 6. Notice. Public hearings shall be set for a time certain after due public notice.
21 7. Annual Report. The Code Enforcement Board shall submit an Annual Report
22 to the Board of County Commissioners. The form, substance, and submittal
23 dates for the Annual Report shall be established by a Policy and Procedure
24 Memorandum (PPM).

25 F. Compensation. The members of the Code Enforcement Board shall receive no
26 compensation for their services. Travel reimbursement is limited to expenses
27 incurred only for travel outside Palm Beach County necessary to fulfill the
28 responsibilities of membership on the Code Enforcement Board. Travel
29 reimbursement shall be made only when sufficient funds have been budgeted and are
30 available, and upon the prior approval of the Board of County Commissioners. No

1 other expenses are reimbursable except documented long distance telephone calls
2 to County staff to fulfill the responsibilities of membership on the Code Enforcement
3 Board.

4 G. Special Master:

5 ~~A.~~ Creation and appointment. The Board of County Commissioners may
6 appoint Special Master(s) who shall have the authority to hear any matter
7 which may be heard by the Code Enforcement Board. The Special Master(s)
8 appointed pursuant to this subparagraph shall not be a current member of the
9 Code Enforcement Board. Special Master(s) shall be appointed on the basis
10 of experience, through the sole discretion of the Board of County
11 Commissioners. Code enforcement hearings pursuant to this Code shall be
12 conducted by designated Special Masters. Applications for Special Master
13 positions shall be directed to the County Administrator pursuant to a notice
14 published in a newspaper of general circulation. The Board of County
15 Commissioners shall select a pool of candidates from the applications filed
16 with the County Administrator on the basis of experience and qualifications.
17 The County Administrator shall appoint Special Masters to conduct hearings
18 from the pool of candidates selected by the Board of County Commissioners
19 as necessary.

20 ~~B.~~ Qualifications. Special Master(s) shall have the following minimum
21 qualifications:

22 ~~a.1.~~ be a graduate of a law school accredited by the American Bar
23 Association;

24 ~~b.2.~~ demonstrate knowledge of administrative laws, land use law, and
25 local government regulation and procedures;

26 ~~c.3.~~ have prior experience serving in a judiciary capacity, or as a hearing
27 officer, mediator, or special master. be a current member, in good
28 standing, of the Florida Bar Association; and

29 4. other such qualifications that may be established by resolution of the

Board of County Commissioners.

In the event the County Administrator does not receive a sufficient number of applications from qualified members of the Florida Bar, the Board of County Commissioners may select attorneys who are not members of the Florida Bar as candidates for Special Master. Among those attorneys who are not members of the Florida Bar, the Board of County Commissioners and County Administrator shall give preference to those attorneys who have prior experience in a judiciary capacity, or as a hearing officer, mediator or special master. No attorney, who has been disciplined by the Florida Bar Association or a bar association of any other jurisdiction, shall be appointed as a Special Master.

3. Duties. The Special Master(s) shall have the same authority, power and duties as is granted to the Code enforcement Board and shall function pursuant to the Code Enforcement policies and procedures. Hearings and proceedings before Special Master(s) shall be conducted in accordance with the terms of Article 14 of this code and Chapter 162, Florida Statutes.

C. Powers and Duties. Special Masters shall have the following powers and duties:

1. To hold hearings and to make findings of fact and conclusions of law as are necessary to enforce the provisions of this Code and the building, electrical, fire, gas, landscape, plumbing, and other codes of Palm Beach County if there has been a failure to correct a violation within the time specified by the code inspector, if the violation has been repeated, or is of such a nature that it cannot be corrected.

2. To issue subpoenas compelling the presence of persons at Code Enforcement Board hearings. Subpoenas may be served by the Palm Beach County Sheriff's Department, or other authorized persons consistent with Rule 1.140(d), Fla.R.Civ.Pro.

3. To issue subpoenas compelling the production of evidence at code

enforcement hearings.

4. To take testimony under oath.
5. To issue orders having the force of law commanding whatever steps are necessary to achieve compliance with this Code and the County's building, electrical, fire, gas, landscape, plumbing and other codes of Palm Beach County.
6. To assess fines pursuant to Section 14.2 of this Code.
7. To lien property.
8. To assess costs pursuant to Section 14.2 of this Code.

D. Rules of Procedure. The Board of County Commissioners shall have the authority to prescribe rules of procedure for the conduct of hearings before the Special Masters by resolution.

4.E. Term. The Special Master(s) shall serve at the pleasure of the Board of County Commissioners for such period as determined by the Board. Special Masters shall serve a term of one (1) year from the date of appointment by the County Administrator. Special Masters may be reappointed at the discretion of the County Administrator. There shall be no limit on the number of terms a person may serve as a Special Master.

F. Removal. At any time during the appointment, the County Administrator shall have the authority to remove a Special Master with or without cause upon ten (10) days written notice.

G. Vacancy. If any Special Master resigns or is removed prior to expiration of his or her term or the County Administrator determines that the Special Master should not be reappointed, the County Administrator shall appoint a Special Master from the pool of candidates previously selected by the Board of County Commissioners to fill the vacancy within thirty (30) days.

H. Conflicts of Interest. Special Masters shall not be considered outside or special counsel and shall not be subject to PPM# CW-O-52 relating to outside counsel conflicts of interest.

1 1. Meetings.

2 1. Scheduling. The Code Enforcement Division shall be responsible for
3 scheduling meetings of Special Masters. In the case of an alleged
4 violation as set forth in Section 14.2A.3 of this Code, a hearing may
5 be called as soon as practical.

6 2. Location. The location of the meetings shall be in Palm Beach
7 County, Florida.

8 3. Operating procedures. All cases brought before Special Masters shall
9 be presented by either the Code Enforcement Division or an attorney
10 representing the Division.

11 4. Meetings open to the public. All meetings and public hearings shall
12 be open to the public.

13 J. Compensation. Special Masters shall serve without compensation for their
14 services and shall not be considered County employees. Travel
15 reimbursement is limited to expenses incurred only for travel outside Palm
16 Beach County necessary to fulfill the responsibilities as a Special Master.
17 Travel reimbursement shall be made only when sufficient funds have been
18 budgeted and are available, and upon prior approval by the Board of County
19 Commissioners. No other expenses shall be reimbursable except documented
20 long distance telephone calls to County staff to fulfill the responsibilities as
21 a Special Master.

22 **SUBPART 2 Section 14.1, GENERAL, is amended to add and delete language as follows:**

23 SEC. 14.1 GENERAL. The provisions of this Code shall be enforced by (1) the Palm Beach
24 County Code Enforcement Board and/or Special Masters pursuant to the authority
25 granted by Sec. ~~162.01~~ 162.03(2) et. seq., Fla. Stat., as may be amended, (2) the
26 Palm Beach County Environmental Control Hearing Board pursuant to the Palm
27 Beach County Environmental Control Act, Chapter 77-616, Special Acts, Laws of
28 Florida, as may be amended, (3) the Palm Beach County Groundwater and Natural
29 Resources Protection Board, an alternative code enforcement board created pursuant

1 to the authority granted by Sec. 162.03(2) et. seq., Fla. Stat., as may be amended, (4)
2 the Board of County Commissioners through its authority to enjoin and restrain any
3 person violating the Code, or (5) Palm Beach County through the prosecution of
4 violations in the name of the State of Florida pursuant to the authority granted by Sec.
5 125.69, Fla. Stat., as may be amended.

6 **SUBPART 3. Section 14.2, ENFORCEMENT BY CODE ENFORCEMENT BOARD**
7 **AND/OR SPECIAL MASTER, is amended to add and delete language as**
8 **follows:**

9 SEC.14.2 ENFORCEMENT BY CODE ENFORCEMENT BOARD ~~AND/OR SPECIAL~~
10 ~~MASTERS. The Code Enforcement Board and/or Special Masters shall have the~~
11 ~~jurisdiction and authority to hear and decide alleged violations of the codes and~~
12 ~~ordinances enacted by Palm Beach County including, but not limited to the following~~
13 ~~codes: building, electrical, fire, gas, landscape, plumbing, sign, zoning and any other~~
14 ~~similar type codes which may be passed by Palm Beach County in the future which~~
15 ~~regulate aesthetics, construction, safety, or location or any structure on real property~~
16 ~~in Palm Beach County. Further, any violation(s) of Articles 1 through 8 and Articles~~
17 ~~10 through 12, except Sec. 7.6, of this Code may be prosecuted pursuant to the~~
18 ~~following standards and procedures. For the purposes of this Section 14.2, the term~~
19 ~~"repeat violation" shall mean a violation of a provision of a code or ordinance by a~~
20 ~~person whom the Code Enforcement Board or Special Master has been previously~~
21 ~~found through a Code Enforcement Board or Special Master or any other quasi-~~
22 ~~judicial or judicial process within the prior five (5) years to have violated or who has~~
23 ~~admitted violating the same provision within five years prior to the violation,~~
24 ~~notwithstanding the violations occur at different locations.~~

25 A. Procedure. Alleged violation of any of those codes or ordinances of Palm
26 Beach County as described herein may be filed with the Code Enforcement
27 Division by citizens or those administrative officials who have the
28 responsibility of enforcing the various codes or ordinances in force in Palm
29 Beach County.

1. Except as set forth in paragraphs 2. and 3. below, if violation(s) of a
2 code or ordinance is believed to exist, the Code Enforcement Division
3 shall specify a reasonable time to correct the violation(s). Should the
4 violation(s) continue beyond the time specified for correction, the
5 Code Enforcement Division shall give notice to the alleged violator
6 that a Code Enforcement hearing will be conducted concerning the
7 alleged violation(s) as noticed. The notice shall state the time and
8 place of the hearing, as well as the violation(s) which are alleged to
9 exist. ~~At the option of the Code Enforcement Board and/or Special~~
10 ~~Master, notice may additionally be served by publication or posting~~
11 ~~as set forth in Section 14.2.G. of this Code.~~ If the violation is
12 corrected and then repeated or if the violation is not corrected by the
13 time specified for correction by the code inspector, the case may be
14 brought for hearing even if the violation has been corrected prior to
15 hearing, and the notice of violation shall so state. If the code
16 enforcement officer has reason to believe a violation or the condition
17 causing the violation presents a serious threat to the public health,
18 safety and welfare or if the violation is irreparable or irreversible in
19 nature, the code officer shall make a reasonable effort to notify the
20 violator and may immediately notify the ~~enforcement board~~ Special
21 Master and request a hearing.
22 2. If a repeat violation is found, the code inspector shall notify the
23 violator but is not required to give the violator reasonable time to
24 correct the violation. The code inspector, upon notifying the violator
25 of a repeat violation, ~~shall~~ may request a hearing. The Code
26 Enforcement Division shall give notice to the alleged violator as set
27 forth in paragraph 1. above. The case may be brought for hearing
28 even if the repeat violation has been corrected prior to hearing, and
29 the notice shall so state.

3. If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make reasonable effort to notify the violator and may immediately request a code enforcement hearing.

4. If the owner of property which is subject to a code enforcement proceeding transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

a. Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

b. Deliver to the prospective transferee a copy of the notices and other materials relating to the code enforcement proceeding received by the transferor.

c. Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

d. File a notice with the Code Enforcement Division of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five (5) days after the date of the transfer.

A failure to make the disclosures described in paragraphs (a), (b), and (c) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the hearing shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

B. Conduct of Hearing.

1. Upon request of the code inspector, or at such other times as may be

1 necessary, a hearing before the ~~Code Enforcement Board and/or a Code~~
2 ~~Enforcement~~ Special Master may be convened. Minutes shall be kept of all
3 Code Enforcement hearings, and all hearings shall be open to the public.

4 2. At the hearing, the burden of proof shall be upon the Code Enforcement
5 Division to show by a preponderance of the evidence that a violation(s) does
6 exist. Where proper notice of the hearing has been provided to the alleged
7 violator as provided for herein, a hearing may proceed even in the absence of
8 the alleged violator.

9 3. Proper notice may be assumed where a notice of violation has been mailed
10 to the alleged violator by certified mail and the alleged violator, his or her
11 agent, or other person in the household or business has accepted the notice of
12 violation, or where a Code Enforcement Officer, under oath testifies that
13 he/she did hand deliver the notice to the alleged violator. All testimony shall
14 be under oath and shall be recorded. The formal rules of evidence shall not
15 apply but fundamental due process shall be observed and shall govern the
16 proceedings. Upon determination of the ~~Chairperson~~ Special Master,
17 irrelevant, immaterial or unduly repetitious evidence may be excluded, but
18 all other evidence of a type commonly relied upon by reasonably prudent
19 persons in the conduct of their affairs shall be admissible, whether or not such
20 evidence would be admissible in a trial in the courts of Florida. Any part of
21 the evidence may be received in written form.

22 4. ~~Any member of the Code Enforcement Board and/or The Special Master, or~~
23 ~~the attorney representing the Code Enforcement Board and/or Special Master,~~
24 may inquire of or question any witness present at the hearing. ~~Any member~~
25 ~~of the Code Enforcement Board and/or Special Master, an~~ The alleged
26 violator (hereinafter also referred to as respondent), his/her attorney, ~~or~~ Code
27 Enforcement Officers or attorney representing the Division shall be permitted
28 to inquire of or question any witness present at the hearing. The ~~Code~~
29 ~~Enforcement Board and/or Special Master~~ may consider testimony presented

1 by Code Enforcement Officers, the respondent or any other witnesses.

2 5. At the conclusion of the hearing, the ~~Code Enforcement Board and/or Special~~

3 Master shall orally render ~~its~~ his or her decision (order) based on evidence

4 entered into the record. ~~In the case of hearings before the Code Enforcement~~

5 ~~Board, the decision shall be by motion approved by the affirmative vote of~~

6 ~~those members present and voting, except that at least four (4) members of~~

7 ~~the Code Enforcement Board must vote for the action to be official.~~ The

8 decision shall then be transmitted to the respondent in the form of a written

9 order including findings of fact, and conclusions of law consistent with the

10 record. The order shall be transmitted by mail to the respondent within ten

11 (10) days after the hearing. The order may include a notice that it must be

12 complied with by a specified date and that a fine and costs may be imposed

13 and, under the circumstances set forth in Section 14.2.A.3., the cost of repairs

14 or other corrective action may be included along with the fine if the order is

15 not complied with by said date. A certified copy of such order may be

16 recorded in the public records of Palm Beach County and shall constitute

17 notice to any subsequent purchasers, successors in interest, or assigns if the

18 violation concerns real property, and the findings therein shall be binding

19 upon the violator and, if the violation concerns real property, any subsequent

20 purchasers, successors in interest, or assigns. If an order is recorded in the

21 public records pursuant to this paragraph and the order is complied with by

22 the date specified in the order, the ~~Code Enforcement Board or Special~~

23 Master shall issue an order acknowledging compliance that shall be recorded

24 in the public records. A hearing is not required to issue such an order

25 acknowledging compliance.

26 6. If Palm Beach County prevails in prosecuting a case before the ~~Code~~

27 ~~Enforcement Board and/or Special Master, it shall be entitled to recover all~~

28 ~~costs incurred. Whether and to what extent such costs are imposed shall be~~

29 ~~within the discretion of the Code Enforcement Board and/or Special Master~~

1 but shall not exceed the costs incurred.

2 C. Powers. The Code Enforcement Board and/or Special Masters shall have the power
3 to:

4 1. ~~Adopt rules for the conduct of its hearings.~~

5 2.1. Subpoena alleged violators and witnesses to its hearings. Subpoenas may be
6 served by a Sheriff or other authorized persons consistent with Rule ~~1410(c)~~
7 1.410(d), Florida Rules of Civil Procedure upon request by the ~~Chairperson~~
8 Special Master.

9 2.2. Subpoena records, surveys, plats and other documentary materials.

10 2.3. Take testimony under oath.

11 2.4. Issue orders having the full force and effect of law to command whatever
12 steps are necessary to bring a violation into compliance.

13 2.5. Assess fines pursuant to Sec. 14.2.D. (Administrative fines; costs; liens) of
14 this Article, including costs relating to the prosecution of cases before the
15 ~~board~~ Special Master in those cases where the governing body prevails.

16 2.6. Lien property pursuant to Sec. 14.2.D. (Administrative fines; costs; liens) of
17 this Article.

18 2.7. Assess costs pursuant to Sec. 14.2.B.6. of this Article.

19 2.8. Assess costs pursuant to Sec. 14.2.D.1. of this Article.

20 D. Administrative fines; costs; liens.

21 1. The Code Enforcement Board and/or Special Master, upon notification by the
22 code inspector that a Code Enforcement Order has not been complied within
23 the set time or, upon finding that a repeat violation has been committed, may
24 order the violator to pay a fine in an amount specified in this section for each
25 day the violation continues past the date for compliance set forth in the order,
26 or in the case of a repeat violation, for each day the repeat violation
27 continues, beginning with the date the repeat violation is found to have
28 occurred by the code inspector. In addition, if the violation is a violation
29 described in Section 14.2.A.3., the Code Enforcement Board and/or Special

Master shall notify the Board of County Commissioners, which may make all reasonable repairs or other corrective actions which are required to bring the property into compliance and charge the violator with the reasonable costs of the repairs or other corrective actions along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine.

Persons charged with such violation(s) may include:

- a. The owner, agent, lessee, tenant, contractor, or any other person using the land, building, or premises where such violation has been committed or shall exist.
- b. Any person who knowingly commits, takes part or assists in such violation.
- c. Any person who maintains any land, building, or premises in which such violation shall exist.

A fine imposed pursuant to this Section shall not exceed \$250 \$1,000 per day for a first violation and shall not exceed \$500 \$5,000 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to

paragraph 1. of this Section. If, after due notice and hearing, the ~~code enforcement board~~ Special Master finds a violation to be irreparable or irreversible in nature, ~~it~~ he or she may impose a fine not to exceed \$5,000 \$15,000 per violation or as otherwise authorized by Florida State Statute.

In determining the amount of fine, if any, the ~~Code Enforcement Board~~ and/or Special Master shall consider the following factors: 1) the gravity of the violation; 2) any actions taken by the violator to correct the violation; and

3) any previous violations committed by the violator.

3. The ~~Code Enforcement Board and/or~~ Special Master may reduce ~~any~~ fine imposed pursuant to this Section in accordance the procedures and conditions set forth in a resolution adopted by the Board of County Commissioners. The ~~Code Enforcement Board and/or~~ Special Master may authorize the Code Enforcement Division to propose a Consent Order which sets forth agreed terms for payment of any fine. The ~~Code Enforcement Board and/or~~ Special Master may in its discretion adopt such Consent Order in lieu of execution or foreclosure as set forth in paragraph 4. below.

4. A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida. Once recorded the certified copy of an order shall constitute a lien against the land on which the violation(s) exists and upon any other real or personal property owned by the violator; and it ~~may be enforced~~ shall be enforceable in the same manner as a court judgment by the Sheriffs of this State, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgement except for enforcement purposes. A fine imposed pursuant to this Section shall continue to accrue until the violator comes into compliance or until judgement is rendered in a suit to foreclose on a lien, filed pursuant to this Section, whichever comes first. Once recorded the lien shall be superior to any mortgages, liens, or other instruments recorded subsequent to the filing of the ~~code~~ Enforcement Board lien.

5. After three (3) months from the filing of any such lien which remains unpaid, the County may foreclose the lien in the same manner as mortgage liens are foreclosed. Such lien shall bear interest at the rate allowable by law from the date of compliance set forth in the recorded order acknowledging compliance. The local government body shall be entitled to collect all costs incurred in recording and satisfying a valid lien. No lien created pursuant to the

1 provisions of this ordinance may be foreclosed on real property which is a
2 homestead under Article X, Section 4, of the Florida Constitution.

3 E. Other legal remedies. In addition to the criminal penalties and enforcement
4 procedures provided in subsection C above, the Board of County Commissioners
5 may institute any lawful civil action or proceeding to prevent, restrain or abate:

6 1. The unlawful construction, erection, reconstruction, alteration, rehabilitation,
7 expansion, maintenance or use of any building or structure; or
8 2. the occupancy of such building, structure, land or water; or
9 3. the illegal act, conduct, business, or use of, in or about such premises.

10 F. Other administrative remedies.

11 1. Cease and Desist Orders. The department shall have the authority to issue
12 cease and desist orders in the form of written official notices given to the
13 owner of the subject building, property, or premises, or to his agent, lessee,
14 tenant, contractor, or to any person using the land, building or premises where
15 such violation has been committed or shall exist.

16 2. Building Permits and Certificates of Occupancy and Use.

17 a. Issuance. No building permit or certificate of occupancy and use shall
18 be issued by the department for any purpose except in compliance
19 with the provisions of this Code and other applicable ordinances and
20 laws, a decision or the Board of Adjustment, or court decision.

21 b. Revocation. The department may revoke a building permit or
22 certificate of occupancy and use in those cases where an
23 administrative determination has been duly made that false statements
24 or misrepresentations existed as to material fact(s) in the application
25 or plans upon which the permit or approval was based.

26 c. Suspension. The department may suspend a building permit or
27 certificate of occupancy and use where an administrative
28 determination has been duly made that an error or omission on either
29 the part of the permit applicant or government agency existed in the

1 issuance of the permit or certificate approval.

2 A valid permit or certificate shall be issued in place of the incorrect
3 permit or certificate after correction of the error or omission.

4 G. Appeal. Any aggrieved party may appeal an order of the ~~Code Enforcement Board~~
5 ~~and/or~~ Special Master, including Palm Beach County, to the Circuit Court of Palm
6 Beach County, Florida. Such appeal shall not be a hearing ~~de novo~~ and the Court
7 shall be limited to appellate review of the record created before the ~~Enforcement~~
8 ~~Board Special Master~~. Any appeal filed pursuant to this Article shall be considered
9 timely if it was filed within thirty (30) days ~~after the hearing at which the order was~~
10 ~~announced; of the execution of the order to be appealed.~~ The County may assess a
11 reasonable charge for the preparation of the record to be paid by the petitioner in
12 accordance with Section 119.07, Fla. Stat.

13 H. Notices. All notices required by this ordinance shall be by certified mail, return
14 receipt requested, ~~or when mail is not effective~~, or by hand delivery by a Code
15 Enforcement Officer. Notice may also be provided by publication, ~~or posting, or any~~
16 ~~other method~~ consistent with the provisions of Chapter 162, Fla. Stat., as may be
17 amended from time to time. ~~This section shall not apply to notice of special meetings~~
18 ~~as described in Article 4 of this Code.~~ Notice placed shall contain at a minimum, the
19 date, and time of the scheduled meeting of the ~~Enforcement Board Special Master~~
20 during which time the alleged violator is required to appear; the name and address
21 of the alleged violator; the address or legal description of the property wherein the
22 alleged violation(s) has occurred; and those codes or provisions of a code for which
23 the alleged violator has been cited.

24 **PART 2. CAPTIONS:**

25 The captions, sections, headings, and section designations used in this ordinance are intended for the
26 convenience of the users only and shall have no effect in the interpretation of the provisions of this
27 Ordinance.

28 **PART 3. REPEAL OF LAWS IN CONFLICT:**

29 All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict

1 with any provision of this ordinance are hereby repealed to the extent of any conflict.

2 **PART 4. SEVERABILITY:**

3 If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held
4 by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder
5 of this ordinance.

6 **PART 5. INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE:**

7 The provision of this ordinance shall become and be made a part of the Unified Land Development
8 Code of Palm Beach County, Florida. The Sections of the ordinance may be renumbered or
9 relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or
10 any other appropriate word.

11 **PART 6. EFFECTIVE DATE:**

12 The provisions of this ordinance shall become effective upon filing with the Department of State.

13 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,
14 Florida, on this the 19th day of October, 1999.

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18 PALM BEACH COUNTY, FLORIDA, BY ITS
19 BOARD OF COUNTY COMMISSIONERS
20
21
22

23 By: Mande Ford Lee
24 Chair

25 APPROVED AS TO FORM AND
26 LEGAL SUFFICIENCY

27 By: Dana Bebe
28 Assistant County Attorney

29 DOROTHY H. WILKEN, CLERK
30 Board of County Commissioners
31 By: Deborah Sister
32 DEPUTY CLERK
33 PALM BEACH COUNTY, FLORIDA
34
35

36 EFFECTIVE DATE: Filed with the Department of State on the 28th day of OCT, 1999.

37 G:\COMMON\ATTY\WPDATA\ENVIR\LBEEBE\CEB\art14.uldc5

39 STATE OF FLORIDA, COUNTY OF PALM BEACH
40 I, DOROTHY H. WILKEN, Clerk of the
41 Board of County Commissioners certify this to be a
42 true and correct copy of the original filed in my office
43 on (Oct 21) 19, 1999
44 DATED at West Palm Beach, FL on 11/8/99
45 DOROTHY H. WILKEN, Clerk
46 BY: Mande Ford Lee D.C.